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Typed or printed Name: Kristen Cumming

Signature: Kristen Cumming

Date: February 28, 2006

PATENT
Attorney's Docket No. Z-0006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:

TIM DANIELS et al.

Application No.: 09/932,571

Filed: August 16, 2001

For: SYSTEM AND METHOD FOR LUBRICANTS
SUPPLY CHAIN MANAGEMENT

Customer Number: 34014

Group Art Unit: 2167

Examiner: Luke S. Wassum

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BRIEF ON APPEAL

INTRODUCTION

This is an appeal from the decision of the Primary Examiner dated June 8, 2005, finally rejecting claims 1-13 of the above-identified application. The Appellants noticed appeal on October 27, 2005 of the final Official Action mailed on June 8, 2005. An appeal brief was due on December 27, 2005. A petition for a three-month extension of time and requisite fees are also enclosed, thereby setting March 27, 2005 as the date for which a brief in triplicate must be submitted. In accordance with 37 CFR §1.192(a), two additional copies of the Brief and the requisite fee are enclosed herewith.

REAL PARTY IN INTEREST

The real party in interest for the above-identified application is Chevron U.S.A. Inc.

RELATED APPEALS AND INTERFERENCES

There are currently no appeals or interferences of which Appellants, their attorney or assignee is aware, which will directly affect or be affected by or have a bearing on the Board's decision in the pending appeal.

STATUS OF CLAIMS

The application was filed with thirteen (13) claims. Claims 1-13 stands rejected and are appealed. A copy of the appealed claims appears in Appendix A attached hereto.

STATUS OF AMENDMENTS

No amendments were filed after the final rejection.

SUMMARY OF INVENTION

The invention, as recited in claims 1-5, defines a computer programmed to execute a process for lubricants supply chain management, the process including: upon receiving a request from a web-browser client, querying a database including a catalog of lubricants and prices and availability for same and serving the results of the query to the requesting web-browser client for display; serving an order form to the web-browser client which is configured to contain fields for order quantity and type for lubricants, delivery type

preferences and delivery address entered in the web-browser client, and determining and displaying on the web-browser client a delivery price quote; receiving an order from the web-browser client for a specific type and quantity of lubricants and having a specific delivery type selected; electronically transmitting over a network the order to a fulfillment agent selected from the group consisting of a Lubricant Blender or an Order Fulfillment Agent, and mixtures thereof; electronically transmitting over a network the order and the delivery information to a Freight-Handling Agent; where the Freight-Handling Agent inputs the information into a delivery optimization system which outputs a delivery schedule which includes the order, and electronically transmits over a network the order and the delivery information to at least one Trucking Company; and maintaining the status and all actions and communications for the order in a web-accessible database.

The invention, as recited in claims 11-13, also includes a method for lubricants supply chain management including: storing in a web-accessible database a catalog of lubricants and prices-per-unit and availability for same which prices-per-unit decrease based on certain pre-determined criteria; upon receiving at a web server a request from a web-browser client, querying the database and serving the results of the query to the requesting web-browser client for display; serving an order form to the web-browser client which is configured to contain fields for order quantity and type for lubricants, delivery type preferences and delivery address entered in the web-browser client, and determining and displaying on the web-browser client a delivery price quote; receiving an order from the web-browser client for a specific type and quantity of lubricants and having a specific delivery type selected; electronically transmitting over a network the order to an order fulfillment agent; where the order fulfillment agent electronically transmits over a network the order and blending specifications to at least one lubricant blender; electronically transmitting over a network the order and the delivery information to a freight-handling agent; where the freight-handling agent inputs the information into a

delivery optimization system which outputs a delivery schedule which includes the order, and electronically transmits over a network the order and the delivery information to at least one trucking company; and maintaining the status and all actions and communications for the order in a second web-accessible database.

The invention, as recited in claims 6-10, also includes a computer readable medium having computer readable program means embodied thereon for lubricants supply chain management, the computer readable program means including: computer readable program code means for receiving a request from a web-browser client, querying a database including a catalog of lubricants and prices and availability for same and serving the results of the query to the requesting web-browser client for display; computer readable program code means for serving an order form to the web-browser client which is configured to contain fields for order quantity and type for lubricants, delivery type preferences and delivery address entered in the web-browser client, and determining and displaying on the web-browser client a delivery price quote; computer readable program code means for receiving an order from the web-browser client for a specific type and quantity of lubricants and having a specific delivery type selected; computer readable program code means for electronically transmitting over a network the order to a fulfillment agent selected from the group consisting of a Lubricants Blender or an Order Fulfillment Agent, and mixtures thereof; computer readable program code means for electronically transmitting over a network the order and the delivery information to a Freight-Handling Agent; computer readable program code means for maintaining the status and all actions and communications for the order in a database.

ISSUES

The following issues are presented for review (in the order as set forth in the final rejection):

Whether the affidavit filed on May 13, 2005 under 37 CFR §1.131 is effective to antedate U.S. Patent Application Publications 2002/0049667 to Navani et al. and 2002/0013721 to Dabbieri et al. and thereby obviate the rejections of claims 1-13 for obviousness in view of Navani and Dabbieri.

GROUPING OF CLAIMS

Claims 1-13 are grouped together.

ARGUMENT

PTO Position

The Examiner argues that the affidavit filed on May 13, 2005 under 37 CFR §1.131 (“the 131 Affidavit”) does not comply with the formal requirements of the regulation and also is ineffective to overcome the cited references, Navani and Dabbieri, on grounds the dates of the documents attached to the 131 Affidavit are redacted, the 131 Affidavit does not establish prior reduction to practice, or establish prior conception followed by due diligence until constructive reduction to practice by filing.

Appellants' Position

The 131 Affidavit is Effective to Overcome the Applied References

The Examiner argues that the exhibits to the 131 Affidavit are undated and so do not support a prior reduction to practice (*See* Final Rejection *at p. 8, ¶ 17*). While dates on the documents have been redacted, such redaction is a standard practice in order to not provide a would-be interference opponent applicant's earliest date of conception to be used against the applicant. *See, e.g., Ex parte Glasser*, 1880 C.D. 94 (1880) (“ . . . if the applicant or patent owner does not wish to disclose his or her actual dates, he or she may merely allege that the acts referred to occurred prior to a specified date.”). The 131 Affidavit does expressly allege that conception occurred on a date earlier than May 22, 2000. Thus, redaction of the dates from the exhibits is not grounds for rendering the 131 Affidavit ineffective to antedate the cited references. *See, also*, MPEP 715.07 (“If the dates of the exhibits have been removed or blocked off, the matter of dates can be taken care of in the body of the oath or declaration. When alleging that conception or a reduction to practice occurred prior to the effective date of the reference, the dates in the oath or declaration may be the actual dates or, if the applicant or patent owner does not desire to disclose his or her actual dates, he or she may merely allege that the acts referred to occurred prior to a specified date.”)(*emphasis added*).

Regarding due diligence, the effective date of the earliest cited reference is May 22, 2000. The application was filed, and thus constructively reduced to practice, on August 16, 2001. This length of time between the two dates is less than 15 months. Given this relatively short period of time, the 131 Affidavit's express recital of due diligence is sufficient. The business plan in the exhibit provides for approving and developing the invention. In a large corporation, a time period of 15 months is reasonable for reporting the invention to the legal department, arranging a review team and meetings to review the

merits and intellectual property strategy for the invention, and have an attorney prepare an initial draft, have the inventors review it, have the attorney prepare revised drafts, prepare filing documents, etc.

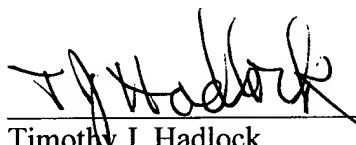
Proof of conception need not recite the claims and specification as finally filed in the application. Further, the applicant-affiant need only show sufficient possession of such part of the invention as the reference in question shows. *See In re Stemple*, 241 F.2d 755, 113 USPQ 77 (CCPA 1957) and *In re Spiller*, 500 F.2d 1170, 182 USPQ 614 (CCPA 1974) (“n5 Since the purpose of the Rule 131 showing is to establish broadly possession of the invention, *In re Tanczyn*, *supra*, it is proper to consider the obviousness of the differences between what is shown and what is claimed because possession of what is shown carries with it possession of variations and adaptations which would, at the same time, be obvious to one skilled in the art.”). See, e.g., charts and diagrams at pages 18, 20, and 24 of the exhibit to the 131 Affidavit. These diagrams and other portions of the exhibit teach the invention as claimed sufficiently to enable one skilled in the art to practice the invention. *See, also, In re Hostettler*, 356 F.2d 562, 148 USPQ 514 (CCPA 1966) (“We think the board erred in its view of what is the invention, and thereby demanded appellants show more in the affidavit than is necessary under Rule 131. Rule 131 requires applicant to make oath to facts showing a completion ‘of the invention.’ That requirement does not mean affiant must show a reduction to practice of every embodiment of the invention. Nor is that requirement coextensive with the amount of disclosure necessary to support a claim under 35 USC 112. . . .”

CONCLUSION

The Examiner has failed to apply the law correctly regarding affidavits submitted under 37 CFR §1.131. And, as a result, the Examiner impermissibly found the 131 Affidavit ineffective to antedate and thus overcome the Navini and Dabbiere references.

It is believed that in view of the foregoing arguments, the Board of Appeals will appreciate that Appellants have made an unexpected discovery and a distinct advance in the art which is not disclosed or suggested by the art of record. It is, therefore, respectfully solicited that the Examiner's rejection of the appealed claims be reversed and that the claims be allowed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'TJ Hadlock', is written over a horizontal line.

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Enclosures

February 28, 2006

Appendix A

Listing of Appealed Claims

- Claim 1. A computer programmed to execute a process for lubricants supply chain management, said process comprising:
- (a) upon receiving a request from a web-browser client, querying a database comprising a catalog of lubricants and prices and availability for same and serving the results of said query to said requesting web-browser client for display;
 - (b) serving an order form to said web-browser client which is configured to contain fields for order quantity and type for lubricants, delivery type preferences and delivery address entered in said web-browser client, and determining and displaying on said web-browser client a delivery price quote;
 - (c) receiving an order from said web-browser client for a specific type and quantity of lubricants and having a specific delivery type selected;
 - (d) electronically transmitting over a network said order to a fulfillment agent selected from the group consisting of a Lubricant Blender or an Order Fulfillment Agent, and mixtures thereof;
 - (e) electronically transmitting over a network said order and said delivery information to a Freight-Handling Agent;

- (f) wherein said Freight-Handling Agent inputs said information into a delivery optimization system which outputs a delivery schedule which includes said order, and electronically transmits over a network said order and said delivery information to at least one Trucking Company; and
- (g) maintaining the status and all actions and communications for said order in a web-accessible database.

- Claim 2. The computer of claim 1, wherein said fulfillment agent is an Order Fulfillment Agent and said Order Fulfillment Agent electronically transmits over a network said order to at least one Lubricant Blender.
- Claim 3. The computer of claim 1, which further comprising serving a product search page to said web browser client, wherein said search page comprising fields supporting alternate search methods selected from the group consisting of product name, product application, cross-applications, and mixtures thereof.
- Claim 4. The computer of claim 1, which further comprises receiving an order from said web-browser client for a specific type of service selected from the group of empty drum pick-up, lubricant analysis, used lubricant pick-up, and mixtures thereof, and electronically transmitting over a network said order to an service order fulfillment agent.
- Claim 5. The computer of claim 1, wherein the prices decrease based on cumulative purchase volume over a pre-determined time period.

Claim 6. A computer readable medium having computer readable program means embodied thereon for lubricants supply chain management, said computer readable program means comprising:

- (a) computer readable program code means for receiving a request from a web-browser client, querying a database comprising a catalog of lubricants and prices and availability for same and serving said results of said query to said requesting web-browser client for display;
- (b) computer readable program code means for serving an order form to said web-browser client which is configured to contain fields for order quantity and type for lubricants, delivery type preferences and delivery address entered in said web-browser client, and determining and displaying on said web-browser client a delivery price quote;
- (c) computer readable program code means for receiving an order from said web-browser client for a specific type and quantity of lubricants and having a specific delivery type selected;
- (d) computer readable program code means for electronically transmitting over a network said order to a fulfillment agent selected from the group consisting of a Lubricants Blender or an Order Fulfillment Agent, and mixtures thereof;

- (e) computer readable program code means for electronically transmitting over a network said order and said delivery information to a Freight-Handling Agent;
- (f) computer readable program code means for maintaining the status and all actions and communications for said order in a database.

Claim 7. The computer readable medium of claim 6 wherein in said computer readable program code means (d) said fulfillment agent order is an order fulfillment agent and said order fulfillment agent electronically transmits over a network said order and blending specifications to at least one lubricant blender.

Claim 8. The computer readable medium of claim 6, further comprising computer readable program code means for serving a product search page to said web browser client, wherein said search page comprising fields supporting alternate search methods selected from the group consisting of product name, product application, cross-applications, and mixtures thereof.

Claim 9. The computer readable medium of claim 6 further comprising computer readable program code means for receiving an order from said web-browser client for a specific type of service selected from the group of empty drum pick-up, lubricant analysis, used lubricant pick-up, and mixtures thereof, and electronically transmitting over a network said order to an service order fulfillment agent.

- Claim 10. The computer readable medium of claim 6, wherein in computer readable program code means (a) the prices decrease based on cumulative purchase volume over a pre-determined time period.
- Claim 11. A method for lubricants supply chain management comprising:
- (a) storing in a web-accessible database a catalog of lubricants and prices-per-unit and availability for same which prices-per-unit decrease based on certain pre-determined criteria;
 - (b) upon receiving at a web server a request from a web-browser client, querying said database and serving said results of said query to said requesting web-browser client for display;
 - (c) serving an order form to said web-browser client which is configured to contain fields for order quantity and type for lubricants, delivery type preferences and delivery address entered in said web-browser client, and determining and displaying on said web-browser client a delivery price quote;
 - (d) receiving an order from said web-browser client for a specific type and quantity of lubricants and having a specific delivery type selected;
 - (e) electronically transmitting over a network said order to an order fulfillment agent;

- (f) wherein said order fulfillment agent electronically transmits over a network said order and blending specifications to at least one lubricant blender;
- (g) electronically transmitting over a network said order and said delivery information to a freight-handling agent;
- (h) wherein said freight-handling agent inputs said information into a delivery optimization system which outputs a delivery schedule which includes said order, and electronically transmits over a network said order and said delivery information to at least one trucking company; and
- (i) maintaining the status and all actions and communications for said order in a second web-accessible database.

Claim 12. The method of claim 11 further comprising receiving an order from said web-browser client for a specific type of service selected from the group of empty drum pick-up, lubricant analysis, used lubricant pick-up, and mixtures thereof, and electronically transmitting over a network said order to an service order fulfillment agent.

Claim 13. The method of claim 11, wherein the pre-determined criteria at which prices-per-unit decreases is cumulative purchase volume over a pre-determined time period.